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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. JESUS ANTONIO ESPINOZA, Defendant and Appellant.	2d Crim. No. B293401 (Super. Ct. No. 17CR05929) (Santa Barbara County)

Jesus Antonio Espinoza appeals a judgment following his conviction of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)[1]), with a finding that he personally inflicted great bodily injury (§ 12022.7, subd. (a)) (count 1), and battery inflicting serious bodily injury (§ 243, subd. (d)) (count 2). He was sentenced to five years in state prison.

We conclude, among other things, that: 1) substantial evidence supports the finding that Espinoza inflicted great bodily injury, and 2) the trial court did not err by rejecting Espinoza's

[1] All statutory references are to the Penal Code.

request for a pinpoint jury instruction on great bodily injury. We affirm.

FACTS

In 2016, Arasmo Salinas bought an automobile repair business from Espinoza. After the sale, Espinoza came to the business several times and demanded more money from Salinas. He claimed he had sold the business too "cheaply." Salinas refused to give Espinoza more money.

On June 8, 2017, Espinoza came to Salinas's business again. He approached Salinas in an "aggressive manner" and demanded more money. Salinas refused. Espinoza punched Salinas in the left eye. Salinas tried to punch Espinoza, but his punch did not "connect."

Salinas lost his balance and fell to the ground. While on the ground, he covered his head. He was not able to defend himself. He could not see because blood was "covering" his face and his eye. Espinoza hit or kicked him six to eight times while he was on the ground. The blows landed on his body and head. Salinas's wife saw Espinoza attacking her husband and yelled "stop" three times. Espinoza ceased the attack and left.

Salinas's face was covered with blood. He suffered injury to his left eye and a fracture on his left "orbital socket." His wife took him to the hospital where doctors placed seven stiches in his eyebrow. He had bruises or swelling on his head, back, and nose. After he was released from the hospital that day, he could not work because he could not see for two days. He could not sleep because of pain during that period.

Police Officer Gina Battaglia went to the hospital emergency room to see Salinas. She testified she saw that he had stitches and his eye was swollen. There was swelling on the left

side of his face and his left hip. He also had a forehead injury. She took photographs of his injuries. Those photographs were admitted into evidence. Espinoza did not testify.

At trial the court instructed jurors with the standard great bodily injury instruction in CALCRIM No. 3160. Espinoza's counsel requested the court to give a pinpoint instruction on great bodily injury. The court declined the request. It ruled the pinpoint instruction was not necessary.

DISCUSSION

Substantial Evidence

Espinoza contends there is insufficient evidence to support a finding that he inflicted great bodily injury. We disagree.

In deciding the sufficiency of the evidence, we draw all reasonable inferences in support of the judgment. We do not weigh the evidence, resolve evidentiary conflicts, or determine the credibility of the witnesses. (*People v. Yeoman* (2003) 31 Cal.4th 93, 128.) Espinoza cites portions of the record and claims it supports his claim that he did not inflict great bodily injury. But the issue is not whether some evidence supports appellant, it is only whether substantial evidence supports the judgment.

Section 12022.7 authorizes a sentencing enhancement for inflicting great bodily injury, which the statute defines "as constituting 'a significant or substantial physical injury.' " (*People v. Escobar* (1992) 3 Cal.4th 740, 746.) It is an injury that "is greater than minor or moderate harm." (*People v. Woods* (2015) 241 Cal.App.4th 461, 487; CALCRIM No. 3160.) A finding of great bodily injury does not require proof that the victim suffered " 'permanent,' 'prolonged' or 'protracted' disfigurement, impairment, or loss of bodily function." (*Escobar*, at p. 750.) "Abrasions, lacerations, and bruising can constitute great bodily

injury." (*People v. Jung* (1999) 71 Cal.App.4th 1036, 1042.) That is what happened here. "Although any medical treatment obtained by the victim is relevant," the statute does "not *require* a showing of necessity of medical treatment" for a great bodily injury finding. (*People v. Wade* (2012) 204 Cal.App.4th 1142, 1150.) Espinoza has not shown the evidence is insufficient. (*Escobar*, at pp. 746, 750; *Jung*, at p. 1042.)

Espinoza's Pinpoint Instruction

Espinoza contends the trial court erred by not reading his proposed pinpoint instruction on great bodily injury to the jury. We disagree.

"A trial court must instruct on the *law* applicable to the facts of the case." (*People v. Mincey* (1992) 2 Cal.4th 408, 437.) A defendant has a right to an instruction that pinpoints the defense theory. (*Ibid*.) "The court must, however, refuse an argumentative instruction, that is, an instruction 'of such a character as to invite the jury to draw inferences favorable to one of the parties from specified items of evidence.' " (*Ibid*.) In addition, the court may refuse to give a pinpoint instruction which is unnecessary or "repetitive of instructions already given." (*Ibid*.)

Espinoza requested the trial court to give the following pinpoint instruction: "A bone fracture *does not qualify* automatically as a great bodily injury. [¶] Pain, disfigurement, suturing, or organ or bone impairment can be great bodily injury *only* if you determine the injury is of *particular quality or intensity*. [¶] There is no generic category of injury which qualifies as great bodily injury without determination of the quality of that injury." (Italics added.)

The trial court did not give the pinpoint instruction. It ruled "the definition for great bodily injury is covered by the standard instruction" and that instruction "provides sufficient guidance to the jury."

The trial court gave jurors an instruction on great bodily injury derived from CALCRIM No. 3160. It provided, "If you find the defendant guilty of the crime charged in Count One, Assault by Means of Force Likely to Produce Great Bodily Injury, a felony, you must then decide whether the People have proved the additional allegation that the defendant personally inflicted great bodily injury on Erasimo Salinas-Sanchez in the commission of that crime. *Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.* [¶] The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find the allegation has not been proved." (Italics added.)

Espinoza agrees that CALCRIM No. 3160 was a correct statement of the law for the great bodily injury allegation on count 1. But he claims the jury could have been confused because the trial court also gave an instruction on count 2 for battery causing serious bodily injury. In that instruction, the court said, "A *serious bodily injury* means a serious impairment of physical condition. Such an injury may include, but is not limited to: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring intensive suturing and/or serious disfigurement."

Espinoza claims his pinpoint instruction was necessary to avoid the confusion jurors might have in understanding "serious

bodily injury," as an element in count 2, and "great bodily injury," as an additional allegation in count 1.

Espinoza's claim that jurors might have been confused is speculation. We start with the assumption that "the jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given." (*People v. Yoder* (1979) 100 Cal.App.3d 333, 338.) "Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation." (*People v. Laskiewicz* (1986) 176 Cal.App.3d 1254, 1258.) Here, the trial court provided a great bodily injury definition for the special allegation on count 1. That there was a definition for a different phrase (serious bodily injury) for a different crime in count 2 does not show how jurors would be confused about their duty to apply the great bodily injury instruction for count 1. (*Yoder*, at p. 338.) The People note, "The serious bodily injury definition was only in the instruction on count 2 . . . separate from any instructions on count 1 or the great bodily injury allegation."

Espinoza has not shown why the jury would not follow the count 1 instructions. Jurors are "presumed to have followed the court's instructions." (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.) There was no confusion about the distinctive nature of counts 1 and 2. They are different crimes. In closing argument, the prosecutor emphasized that "Count 2 is a *completely separate count*." (Italics added.) The issues were not complex and these instructions would not confuse any reasonable juror because they were easy to understand and follow.

Moreover, as the People note, the trial court properly denied Espinoza's pinpoint instruction because it was potentially confusing. It provided, in relevant part, "Pain, disfigurement,

suturing, or organ or bone impairment can be great bodily injury *only if you determine the injury is of particular quality or intensity*." (Italics added.) The phrase "particular quality or intensity" is ambiguous. The pinpoint instruction provided no definition. It would give jurors no guidance as to how to apply that language. It would add a new qualification not found in the CALCRIM instruction on great bodily injury. (CALCRIM No. 3160.) Jurors might assume they need to apply a different standard than the one in CALCRIM No. 3160.

The pinpoint instruction also provided, "There is no generic category of injury which qualifies as great bodily injury without determination of the quality of that injury." But the trial court correctly noted this language was unnecessary and duplicative of other instructions the court selected. The standard instruction on great bodily injury does not list a generic category of injuries. It also defines the quality of the injuries. They must be significant or substantial, and "greater than minor or moderate harm." (CALCRIM No. 3160.)

Moreover, the pinpoint instruction's list of injuries might lead jurors to believe that only the injuries on that list qualify as great bodily injuries. That creates an unnecessary potential conflict between the standard instruction (CALCRIM No. 3160) and the pinpoint.

Espinoza claims this pinpoint instruction was required by *People v. Nava* (1989) 207 Cal.App.3d 1490. We disagree.

In *Nava*, the trial court gave the standard great bodily injury instruction. Then it added language that advised jurors that "a bone fracture" is "a significant and substantial injury." (*People v. Nava*, *supra*, 207 Cal.App.3d at p. 1495.) The appellant claimed this added language "usurps the function of the jury and

amounts to a partially directed verdict on the allegation of great bodily injury." (*Ibid.*) The Court of Appeal agreed. It held the trial court's added language was error because not all bone fractures qualify. The injury has to be "of a particular quality or intensity," and there is "no generic category of injury" that qualifies as great bodily injury without "a determination of the quality of the injury." (*Id.* at p. 1497.) Espinoza used language from the *Nava* opinion for his pinpoint instruction. But the *Nava* court was not composing a jury instruction. It merely explained why the trial court erred in modifying the standard instruction. In fact, had the trial court in *Nava* simply used the standard great bodily injury instruction, as the trial court did in this case, there would not have been a reversal. The court said, "The point is that bone fractures exist on a continuum of severity from significant and substantial to minor." (*Id.* at p. 1496.) That is the same standard found in CALCRIM No. 3160, which the trial court in this case gave to the jury. Nothing in *Nava* supports Espinoza's claim that the trial court erred.

Moreover, had the pinpoint instruction been given, there is no reasonable probability of a different result given the evidence the People presented, and any alleged error is harmless. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Brian E. Hill, Judge

Superior Court County of Santa Barbara

Angelina Lane, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.